

# Amend OR Amend and Restate



## Matching Approach to Situation When Making Changes to a Conservation Easement

If changes to a conservation easement are necessary or desirable, the easement holder must decide whether to amend and restate the grant of easement in full or simply amend it. This guide assists with that decision and points to resources to aid in implementation of the decision.

## Introduction and Available Resources

If a land trust intends to amend a grant of conservation easement, implementation of the changes requires careful planning and drafting. The consequences of poor execution range from missed opportunities to improve easement stewardship to inadvertent elimination of conservation protections.

The purpose of this guide is to assist the land trust that has decided to amend a grant of conservation easement in choosing whether to simply amend the document or amend and restate it in full.

Complementing this guide, WeConservePA publishes and posts [at its library](#) various guides addressing legal and policy considerations as well as best practices [pertaining to the amendment](#) of easement documents. WeConservePA also publishes [model legal documents](#) that can assist with making easement changes. For those who have decided to make changes to an easement and just need instruction in how to implement those changes, the following resources are most relevant:

- [\*Model Amendment of Grant of Conservation Easement and Declaration of Covenants with Commentary\*](#): This model is an instrument for accomplishing a few simple changes to an easement.
- [\*Model Grant of Conservation Easement and Declaration of Covenants with Commentary\*](#): The Supplemental Provisions provide detailed instructions for using the model to accomplish an amendment and restatement of the original grant of easement. (The guide [Drafting an Amendment](#)

[\*and Restatement of a Grant of Conservation Easement\*](#) presents these same instructions.)

- [\*Adding to Land Under Conservation Easement\*](#): A landowner has land under conservation easement and is ready to conserve more of their nearby property. How best to carry this out? This guide describes three approaches and includes a model document to help implement one of the alternatives.

For those who are still deliberating whether to make changes to an easement, WeConservePA publishes other resources [at its library](#), including the [\*Guide and Model Policy for Conservation Easement Amendment\*](#), to assist people in responsibly addressing the matter.

## Amend or Amend and Restate?

An amendment sets forth specific changes to a grant but otherwise keeps all of its provisions intact. A restatement of a grant substitutes an entirely new document for the original grant.

## Situations Pointing to Amendment and Restatement

The easement holder may prefer restatement in the following circumstances:

- If the easement was not created relatively recently, a restatement presents the opportunity to incorporate current best practices into the easement document. Individual land trusts and the land trust movement as a whole have gained a tremendous

amount of knowledge and learned many lessons regarding easement drafting, resource protection, and easement stewardship over the years. A restatement informed by this experience more effectively conserves the land.

- If the original grant did not include important provisions or contains internal contradictions or ambiguities, an amendment that corrects the deficiencies also highlights them. Because it is recorded in the public records, the amendment makes available to other owners of land conserved under the same easement form a list of the weaknesses that some might seek to exploit. A restatement avoids the highlighting of vulnerabilities.
- If the original grant was previously amended, restatement avoids the need to read multiple documents together to get their meaning. A patchwork of changed provisions also risks inadvertent contradictions or lack of clarity within and between the documents.
- Easement administration is simplified by having uniform and effective provisions in each grant administered by the holder. A practice of using amendment requests as an opportunity to update older grants to the holder's current form helps with achieving that uniformity.

The Supplemental Provisions to the [\*Model Grant of Conservation Easement and Declaration of Covenants\*](#) provide detailed instructions for using the model to accomplish an amendment and restatement of the original grant of easement. The instructions can help holders identify issues to address in a restatement whether or not they actually use the model. A key objective of the instructions is to ensure that the restatement supersedes but does not release the old document; if followed, the restated grant will retain the same priority and enforceability as the original grant.

## Situations Pointing to Simple Amendment

The easement holder may prefer a simple amendment in the following circumstances:

- The proposed change is simple and straightforward; for example, permission to build an additional residence is to be eliminated or the parties wish to allow an existing improvement to be moved to a previously prohibited location (now recognized to be appropriate).
- The original grant was made relatively recently and thus uses the holder's present form or is acceptably close to it in form.

The [\*Model Amendment of Grant of Conservation Easement and Declaration of Covenants\*](#) is an instrument for accomplishing a few simple changes to an easement.

## Adding Land to an Easement

If the owners wish simply to add additional land to the easement—keeping the same conservation objectives and imposing the same restrictions as under the original grant—a simple amendment would seem in order. However, neither an amendment nor an amendment and restatement are the preferred way to achieve that end. The better method is to record a separate grant *then consolidate the two grants into one restated grant*.

Why? First, for clarity on the public records: a title examiner searching the public records is sure to find a conservation easement granted on Parcel B (and the consolidation document) but may not discover that an amendment of an existing grant on Parcel A creates an easement over Parcel B. Second, to guard against a disastrous error: a separate document is certain to include a clause granting and conveying the easement on the additional land; this crucial language may be inadvertently omitted in an amendment.

The guide [\*Adding to Land Under Conservation Easement\*](#) describes three approaches to adding land and provides detailed instructions for accomplishing the addition.



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A portion of this guide appeared in different form in the WeConservePA guide, “Amending and Restating Grants of Conservation Easement,” which was originally published in 2015.

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